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Lynn Shapiro Starr
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February 11, 1998

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte Statement
CC Docket 96-115
CPNI

Dear Ms. Salas:

On Tuesday, February 10, 1998, Mr. Ronald Blake, President, Ameritech Small Business Services, Mr. John Gockley, General Counsel, Ameritech Consumer Services, Mr. Michael Pabian, Regulatory Counsel and I met, in separate meetings, with Mr. Richard Metzger, Chief, Common Carrier Bureau and staff, Mr. Tom Power, Legal Advisor to Chairman Kennard, Mr. Jim Casserly, Legal Advisor to Commissioner Ness, Mr. Kyle Dixon, Legal Advisor to Commissioner Powell, Mr. Paul Gallant, Legal Advisor to Commissioner Tristani, and Mr. Kevin Martin, Legal Advisor to Commissioner Furchtgott-Roth.

Ameritech presented its position that notice and "opt-out" satisfy the statutory requirement of Section 222 to obtain customer approval to use customer proprietary network information (CPNI). Additionally, Ameritech stated that any rules regarding the use of CPNI should apply equally to all telecommunication providers and that the non-discrimination requirements of Section 272 do not apply to the use of CPNI. The attached material was used as part of our discussion.

Sincerely,

Attachment

cc: R. Metzger
T. Power
J. Casserly
K. Dixon

P. Gallant
K. Martin
D. Atwood
B. Scinto

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Ameritech (BOC Coalition)
Ex Parte Presentation
CC Docket No. 96-115

Customer expectations of the service they should receive from carriers with which they have an existing relationship will be frustrated unless CPNI use “approval” can be obtained through a routine notice and opt-out process.

- Imposing an affirmative consent requirement, rather than relying on notice and opt out, is not supported by a balanced reading of section 222 or relevant legislative history.
 - Compare 222(c)(1) requiring only “ approval” with 222(c)(2) which mentions “affirmative written request”.
 - A prior version of section 222 (H.R.3432 - which applied to LECs only) would have required a customer’s “affirmative request” before CPNI could be used broadly. (See USW initial comments @ n. 52.)
 - The language was changed to make it applicable to all carriers and to substitute “approval” for “affirmative request”. These changes were maintained in H.R.1555 which provided the language for section 222.
 - H.R.1555 would have also required the Commission to conduct an inquiry to determine the impact of telecommunications changes on consumers’ “privacy rights”. It would have specifically required the Commission to look at whether consumers are able:
 - to know about the information being collected about them;
 - to have notice that the information may be used for another purpose or sold to other companies; and
 - to stop the reuse or sale of the information.

- This language shows the drafters' belief that notice and opt-out is sufficient protection for customers' privacy rights and fulfills their privacy expectations. Moreover, it existed in juxtaposition with the "approval" language of the immediate predecessor to section 222, showing that, consistent with the removal of the term "affirmative" from prior drafts, "approval" could be achieved through a notice and opt-out process.
- Customer expectations of privacy militate against an affirmative consent requirement and support notice and opt-out.
 - Customers trust their current carriers to protect and use their customer information responsibly.
 - Customers expect a carrier with which they have a relationship to use customer information to market the entire array of its products and services.
 - Customer approval of this practice increases if customers are notified of the practice and given the opportunity to "opt-out." See Westin study (Pacific Telesis ex parte) showing 82% approval.
 - The three-bucket tentative conclusion (although drawing artificial distinctions which still ultimately frustrate customers seeking "one stop" solutions) tacitly recognizes these customer privacy expectations in situations in which the customer has an existing relationship with a carrier "holding" the customer's information.

- In spite of these reasonable expectations, affirmative consent cannot be obtained from most customers in the mass market.
 - Approval for “global” use given by customers on inbound calls (i.e., in situations in which they are actively thinking on their terms about their relationship with their carrier) is extremely high (Ameritech 91%+ experience); but only a small percentage of customers initiates calls. (Note: Westin approval figures were obtained in the context of focus groups in which the customers were focusing on the issue.)
 - Individual customers simply will not respond to written requests, regardless of the nature of the request (1-3%) -- much less when the request would be for something as arcane and counterintuitive as a request for permission to use CPNI.
 - “Unengaged” customers on outbound calls are suspicious about granting permission to use information that they know the carrier already has in its possession and expect it to use.
 - In CI-III, the Commission rejected a “prior authorization” rule for the mass market, noting its expectation that very few customers would want their CPNI restricted -- essentially recognizing the benefits that would be lost through customer inaction if such a rule were adopted. It found that an “opt-out” approach would place the burden of responding on the minority rather than the majority of users. (3 FCC Rcd. 1162-3.)

- Carrier use of CPNI, which is unopposed by the vast majority of customers, will permit carriers to satisfy customers' needs. For example:
 - A wireless long distance customer might benefit from combining landline and wireless long distance to achieve the best rate; without the ability to use information across buckets, the carrier would not know which customers to make such an offer to.
 - IntraLATA toll customers of local exchange carriers may benefit from the interLATA offerings of LECs and their affiliates.
 - As carriers move to fully integrated offers ("one stop shopping"), anomalies created by artificial bucket boundaries will become exacerbated. Customers who want to be served by one carrier and who cannot reasonably be expected to understand such legal niceties will be frustrated.
 - Target marketing to customers who can reasonably be expected to have specific telecommunications needs is preferable (for both customers and carriers) to saturating the market with messages that have a poor fit for most customers or to doing no marketing at all.

Joint marketing under section 222.

- In section 222, Congress intended to speak comprehensively on CPNI for all carriers.
- Section 272(g)(3) exempts joint marketing (and activities concerning CPNI in connection with joint marketing) from the nondiscrimination requirements of 272(d). This is simply Congress's recognition of the fact that, despite the structural safeguards of section 272, customers expect and would be benefited by the ability of all carriers they deal with to be a "one stop shop".

Union Calendar No. 105

104TH CONGRESS
1ST SESSION

H. R. 1555

[Report No. 104-204, Part I]

A BILL

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

JULY 24, 1995

Reported from the Committee on Commerce with an amendment

Committee on the Judiciary discharged, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

1 with that carrier or service are just and reasonable
 2 and are not unjustly or unreasonably discriminatory;

3 “(2) enforcement of such regulation or provision
 4 is not necessary for the protection of consumers; and

5 “(3) forbearance from applying such provision or
 6 regulation is consistent with the public interest.

7 “(b) *COMPETITIVE EFFECT TO BE WEIGHED.*—In
 8 making the determination under subsection (a)(3), the Com-
 9 mission shall consider whether forbearance from enforcing
 10 the provision or regulation will promote competitive market
 11 conditions, including the extent to which such forbearance
 12 will enhance competition among providers of telecommuni-
 13 cations services. If the Commission determines that such
 14 forbearance will promote competition among providers of
 15 telecommunications services, that determination may be the
 16 basis for a Commission finding that forbearance is in the
 17 public interest.”.

18 **SEC. 104. PRIVACY OF CUSTOMER INFORMATION.**

19 (a) *PRIVACY OF CUSTOMER PROPRIETARY NETWORK*
 20 *INFORMATION.*—Title II of the Act is amended by inserting
 21 after section 221 (47 U.S.C. 221) the following new section:

22 **“SEC. 222. PRIVACY OF CUSTOMER PROPRIETARY NETWORK**
 23 **INFORMATION.**

24 “(a) *SUBSCRIBER LIST INFORMATION.*—Notwith-
 25 standing subsections (b), (c), and (d), a carrier that pro-

1 *vides local exchange service shall provide subscriber list in-*
2 *formation gathered in its capacity as a provider of such*
3 *service on a timely and unbundled basis, under nondiscrim-*
4 *inatory and reasonable rates, terms, and conditions, to any*
5 *person upon request for the purpose of publishing direc-*
6 *tories in any format.*

7 *“(b) PRIVACY REQUIREMENTS FOR COMMON CAR-*
8 *RIERS.—A carrier—*

9 *“(1) shall not, except as required by law or with*
10 *the approval of the customer to which the information*
11 *relates—*

12 *“(A) use customer proprietary network in-*
13 *formation in the provision of any service except*
14 *to the extent necessary (i) in the provision of*
15 *common carrier services, (ii) in the provision of*
16 *a service necessary to or used in the provision of*
17 *common carrier services, including the publish-*
18 *ing of directories, or (iii) to continue to provide*
19 *a particular information service that the carrier*
20 *provided as of May 1, 1995, to persons who were*
21 *customers of such service on that date;*

22 *“(B) use customer proprietary network in-*
23 *formation in the identification or solicitation of*
24 *potential customers for any service other than*

1 the telephone exchange service or telephone toll
2 service from which such information is derived;

3 “(C) use customer proprietary network in-
4 formation in the provision of customer premises
5 equipment; or

6 “(D) disclose customer proprietary network
7 information to any person except to the extent
8 necessary to permit such person to provide serv-
9 ices or products ~~that~~ are used in and necessary
10 to the provision by such carrier of the services
11 described in subparagraph (A);

12 “(2) shall disclose customer proprietary network
13 information, upon affirmative written request by the
14 customer, to any person designated by the customer;

15 “(3) shall, whenever such carrier provides any
16 aggregate information, notify the Commission of the
17 availability of such aggregate information and shall
18 provide such aggregate information on reasonable
19 terms and conditions to any other service or equip-
20 ment provider upon reasonable request therefor; and

21 “(4) except for disclosures permitted by para-
22 graph (1)(D), shall not unreasonably discriminate be-
23 tween affiliated and unaffiliated service or equipment
24 providers in providing access to, or in the use and

1 disclosure of, individual and aggregate information
2 made available consistent with this subsection.

3 "(c) *RULE OF CONSTRUCTION.*—This section shall not
4 be construed to prohibit the use or disclosure of customer
5 proprietary network information as necessary—

6 "(1) to render, bill, and collect for the services
7 identified in subsection (b)(1)(A);

8 "(2) to render, bill, and collect for any other
9 service that the customer has requested;

10 "(3) to protect the rights or property of the car-
11 rier;

12 "(4) to protect users of any of those services and
13 other carriers from fraudulent, abusive, or unlawful
14 use of or subscription to such service; or

15 "(5) to provide any inbound telemarketing, refer-
16 ral, or administrative services to the customer for the
17 duration of the call if such call was initiated by the
18 customer and the customer approves of the use of such
19 information to provide such service.

20 "(d) *EXEMPTION PERMITTED.*—The Commission may,
21 by rule, exempt from the requirements of subsection (b) car-
22 riers that have, together with any affiliated carriers, in the
23 aggregate nationwide, fewer than 500,000 access lines in-
24 stalled if the Commission determines that such exemption
25 is in the public interest or if compliance with the require-

1 ments would impose an undue economic burden on the car-
2 rier.

3 "(e) DEFINITIONS.—As used in this section:

4 "(1) CUSTOMER PROPRIETARY NETWORK INFOR-
5 MATION.—The term 'customer proprietary network
6 information' means—

7 "(A) information which relates to the quan-
8 tity, technical configuration, type, destination,
9 and amount of use of telephone exchange service
10 or telephone toll service subscribed to by any cus-
11 tomer of a carrier; and is made available to the
12 carrier by the customer solely by virtue of the
13 carrier-customer relationship;

14 "(B) information contained in the bills per-
15 taining to telephone exchange service or telephone
16 toll service received by a customer of a carrier;
17 and

18 "(C) such other information concerning the
19 customer as is available to the local exchange
20 carrier by virtue of the customer's use of the car-
21 rier's telephone exchange service or telephone toll
22 services, and specified as within the definition of
23 such term by such rules as the Commission shall
24 prescribe consistent with the public interest;

1 except that such term does not include subscriber list
2 information.

3 “(2) *SUBSCRIBER LIST INFORMATION*.—The term
4 ‘subscriber list information’ means any informa-
5 tion—

6 “(A) identifying the listed names of sub-
7 scribers of a carrier and such subscribers’ tele-
8 phone numbers, addresses, or primary advertis-
9 ing classifications (as such classifications are as-
10 signed at the time of the establishment of such
11 service), or any combination of such listed
12 names, numbers, addresses, or classifications;
13 and

14 “(B) that the carrier or an affiliate has
15 published, caused to be published, or accepted for
16 publication in any directory format.

17 “(3) *AGGREGATE INFORMATION*.—The term ‘ag-
18 gregate information’ means collective data that relates
19 to a group or category of services or customers, from
20 which individual customer identities and characteris-
21 tics have been removed.”

22 (b) *CONVERGING COMMUNICATIONS TECHNOLOGIES*
23 *AND CONSUMER PRIVACY*.—

1 (1) COMMISSION EXAMINATION.—Within one
2 year after the date of enactment of this Act, the Com-
3 mission shall commence a proceeding—

4 (A) to examine the impact of the integra-
5 tion into interconnected communications net-
6 works of wireless telephone, cable, satellite, and
7 other technologies on the privacy rights and rem-
8 edies of the consumers of those technologies;

9 (B) to examine the impact that the
10 globalization of such integrated communications
11 networks has on the international dissemination
12 of consumer information and the privacy rights
13 and remedies to protect consumers;

14 (C) to propose changes in the Commission's
15 regulations to ensure that the effect on consumer
16 privacy rights is considered in the introduction
17 of new telecommunications services and that the
18 protection of such privacy rights is incorporated
19 as necessary in the design of such services or the
20 rules regulating such services;

21 (D) to propose changes in the Commission's
22 regulations as necessary to correct any defects
23 identified pursuant to subparagraph (A) in such
24 rights and remedies; and

1 (E) to prepare recommendations to the Con-
2 gress for any legislative changes required to cor-
3 rect such defects.

4 (2) *SUBJECTS FOR EXAMINATION.*—In conduct-
5 ing the examination required by paragraph (1), the
6 Commission shall determine whether consumers are
7 able, and, if not, the methods by which consumers
8 may be enabled—

9 (A) to have knowledge that consumer infor-
10 mation is being collected about them through
11 their utilization of various communications tech-
12 nologies;

13 (B) to have notice that such information
14 could be used, or is intended to be used, by the
15 entity collecting the data for reasons unrelated to
16 the original communications, or that such infor-
17 mation could be sold (or is intended to be sold)
18 to other companies or entities; and

19 (C) to stop the reuse or sale of that informa-
20 tion.

21 (3) *SCHEDULE FOR COMMISSION RESPONSES.*—
22 The Commission shall, within 18 months after the
23 date of enactment of this Act—

24 (A) complete any rulemaking required to re-
25 vise Commission regulations to correct defects in

1 such regulations identified pursuant to para-
2 graph (1); and

3 (B) submit to the Congress a report con-
4 taining the recommendations required by para-
5 graph (1)(C).

6 **SEC. 105. POLE ATTACHMENTS.**

7 Section 224 of the Act (47 U.S.C. 224) is amended—

8 (1) in subsection (a)(4)—

9 (A) by inserting after "system" the follow-
10 ing: "or a provider of telecommunications serv-
11 ice"; and

12 (B) by inserting after "utility" the follow-
13 ing: ", which attachment may be used by such
14 entities to provide cable service or any tele-
15 communications service";

16 (2) in subsection (c)(2)(B), by striking "cable tel-
17 evision services" and inserting "the services offered
18 via such attachments";

19 (3) by redesignating subsection (d)(2) as sub-
20 section (d)(4); and

21 (4) by striking subsection (d)(1) and inserting
22 the following:

23 "(d)(1) For purposes of subsection (b) of this section,
24 the Commission shall, no later than 1 year after the date
25 of enactment of the Communications Act of 1995, prescribe